

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

DIVISION II

MARY E. MIVILLE, a single person,

Appellant,

v.

ROBIN ARNOLD-WILLIAMS, Secretary,
Department of Social and Health Services, and
the DEPARTMENT OF SOCIAL AND
HEALTH SERVICES, and the STATE OF
WASHINGTON, and RICHARD MEHLMAN
and ‘JANE DOE’ MELHMAN, a married
couple.

Respondents.

No. 37862-1-II

UNPUBLISHED OPINION

Houghton, P.J. — Mary Miville appeals the trial court’s dismissal of her claims against her employers, Western State Hospital (WSH), Department of Social and Health Services (DSHS), Richard Mehlman, and Robin Arnold-Williams (the employers), for gender discrimination, gender-based hostile work environment, and retaliation. She argues that she met her burden of proving a prima facie case sufficient to defeat summary judgment. We disagree and affirm.

FACTS

After earning a master of arts degree in educational ministries, Miville began working at WSH¹ in 1985. She worked as a forensic therapist² in the Legal Offender Unit, later named the Center for Forensic Studies (CFS), a unit that evaluates pretrial competency and performs competency restoration for those found not guilty by reason of insanity. Forensic therapist duties originally included appearing in court, writing court letters, writing treatment plans, performing psycho-social assessments, providing individual and group counseling, and performing interventions.

In February 2001, Richard Mehlman, Ph.D., became the director of the CFS. At that time, he moved Miville to Ward S-8, an inpatient treatment ward. Mehlman maintains that he changed the direction of the CFS to provide better treatment for patients as result of a lawsuit involving the care and housing of patients (the Rust litigation). Miville testified in the Rust litigation about the lack of adequate treatment and care in the CFS. Along with the Rust litigation, she testified about her observation of the parties at issue in a different lawsuit involving sexual harassment.³

As a result of the Rust litigation, many duties that forensic therapists once performed were reassigned to those with a master's degree in psychology or social work because of higher credentialing standards and increased funding.

In December 2001, 14 patients in Ward S-8 submitted a petition complaining about

¹ WSH is a mental health facility in Steilacoom, Washington, and is part of DSHS.

² The job class description changed from therapy supervisor to forensic therapist in the late 1980s.

³ Mehlman had no part in the sexual harassment litigation.

psychological abuse by Miville. Consequently, Miville was temporarily assigned to the medical records department because of a policy prohibiting patient contact during a patient abuse investigation. The investigation found the alleged misconduct unsubstantiated, and the allegations against Miville were eventually dropped. Another employee also allegedly engaged in misconduct. Miville complains that nothing was done to Jeff Thurston, the male Ward Manager, after she reported that he swore at patients. But she later admitted that he was restricted from the ward.

From Medical Records, Miville moved to Ward F-1,⁴ an admissions unit in the CFS. About one-half of the patients in F-1 stayed briefly after referral from the courts for competency evaluations. There, Miville prepared initial psychosocial assessments and treatment plans for the offenders. She maintains, however, that her work in the admissions unit required less knowledge, expertise, and education than her previous duties. Nevertheless, she opted to stay there because it permitted her to keep her four-day schedule for a while longer.

But as treatment services increased, Miville was required, like all other staff (including men), to work a five-day, 40-hour week. In 2002, Mehlman informed Miville that she could no longer work four 10-hour shifts because the patients were best served by having her there every day of the week.

In April 2002, Miville applied for a Psychologist 3 position within the CFS.⁵ The Psychologist 3 job description expressly stated that the minimum qualifications included a

⁴ Ward F-1 was previously called Ward S-5.

⁵ Human Resources stated that no record exists of Miville's application.

master's or doctorate degree in psychology, clinical psychology, or counseling psychology. WSH officials explained that Miville lacked a minimum qualification to get the job because she did not have a master's degree in psychology.

In November 2003, Miville applied for another promotion as program manager on Ward F-6. No one interviewed her, and another woman was given the job. Mehlman explained that Miville lacked the qualifications for a ward manager because she did not hold a psychologist license. But not every ward manager must be a licensed psychologist, and the employers hired a woman named Kelsey Fassieux because she had a master's degree in special education, she was working on her Ph.D in clinical psychology, and she came highly recommended.

Miville also showed interest in a Psychiatric Social Worker position at one point. Although nothing in the record shows whether she formally applied for the position,⁶ she did not meet the requirements to fill the vacant social worker position because she did not have a master's degree in social work and WSH had not credentialed her.

In May 2004, Miville requested that she be allowed to produce psychosocial and treatment plans as she did before Mehlman implemented changes in the CFS. Along with Miville, only two others retain the forensic therapist position. One male forensic therapist, Kent Olson, experienced the same shift in job duties on reassignment of tasks to social workers. But the third male forensic therapist, John Higgins, continued to perform the tasks that Miville and Olson had once been able to perform under the supervision of a person with a master's degree in social work. Higgins was permitted to do so without a master's degree in social work because the department

⁶ The record contains Miville's letter of interest in which she states that she was told she did not need to fill out an application.

had “credentialed” him. Clerk’s Papers (CP) at 20. The director of social work explained that Higgins became credentialed because of his clinical master’s degree in rehabilitative counseling and his prior experience with competency restoration. Thus, Miville’s request was denied because, unlike Higgins, Miville does not have a master’s degree in a clinical field.

In June 2004, Miville was reassigned part time to the new Therapies and Recovery Center (TRC) within the CFS. She was transferred to the TRC because of her group therapeutic skills and to meet program needs. In the TRC, her job duties centered on group education. She saw the change in her job duties as a reduction in “stature or prestige.” CP at 150. Yet she stated at one point that she decided to work in the TRC after she was given a chance to stay on Ward F-1. She remained part time on Ward F-1 until September 2004, when she began working full time on the TRC.

While Miville worked part time on Ward F-1, she had a private office adjacent to the ward. Mehlman states that she did not complain about the office at the time. But she later complained that the office had no windows or circulation and that union members did not have access to her. Mehlman explained that a key was required to enter the room for security purposes. And because it was policy to assign employees work space close to their worksites, Miville was given a new office located in a TRC classroom after her full-time transfer to the TRC. Although she did not have a private office in the TRC, a private conference room was available to her.

In September 2004, Miville filed a grievance contesting her change in job duties, alleging discrimination and retaliation, and asking for a phone and computer in her new TRC office.

Mehlman explained that her equipment request was expedited and that she received the equipment within a few weeks. A labor relations specialist evaluated her grievance and found no evidence of discrimination or retaliation.

Throughout her employment, Miville was involved with her union. She began working as a shop steward for her union in 1996. She brought numerous issues to the attention of her supervisors, including short staffing, lack of security, patient abuse, and crowded wards.

In November 2004, Mehlman directed all supervisors to obtain his approval before releasing a subordinate to perform union duties during core treatment hours. Although the directive applied to all shop stewards, another employee, Melanie Quimby, said that Mehlman said the purpose of his restriction was to “keep Mary Miville in check.” CP at 112. The directive has only once required Miville to discontinue an activity.

Miville also asserts that she was denied multiple training opportunities throughout her employment. Mehlman explained that a staff member must request to attend a training in writing and explain how it will enhance his or her job performance or lead to professional growth. Miville claims that she requested to attend certain medical and forensic lectures. Nothing shows that she made a proper request to attend the lectures. And the continuing medical education and forensic series lectures targeted medical professionals and those who testify about their forensic evaluations. No one disputes that Miville was not permitted to attend a 40-hour course on mediation in 2004. Mehlman explained that Miville had failed to explain how the mediation training benefitted her employment and that the employer allowed no other employee to attend at state expense. Miville admits that she does not know anyone who was permitted to attend the

training.

Although Miville was reassigned multiple times under Mehlman's tenure, she never lost any salary and no disciplinary action was taken against her. In fact, she was paid at the top of the Forensic Therapist II pay range.

On October 7, 2005, Miville filed a tort claim with the Washington State Division of Risk Management. She alleged, among other things, unequal treatment, age and gender-based harassment and retaliation,⁷ and that work conditions inhibited her ability to work in a hostile-free environment.

On February 10, 2006, Miville filed suit against the employers. In December 2007, the employers moved for summary judgment, arguing that (1) some of Miville's claims fell outside the statute of the limitations; (2) her tort claim form did not properly set forth claims; (3) she failed to present a prima facie case of discrimination, hostile work environment, and retaliation; and (4) she could not show pretext. She moved to strike much of the employers' evidentiary support for their motion. The trial court denied her motion to strike, while limiting the use of some of the evidence. The trial court granted the employers' motion to strike much of Miville's evidence supporting her response to the motion for summary judgment.

The trial court granted the employers' motion in part, dismissing Miville's age and gender-related claims. It allowed her retaliation claim to move forward because of the statement Mehlman allegedly made about keeping Miville "in check." Report of Proceedings (RP) at 43. Shortly thereafter, the trial court granted the employers' motion for reconsideration on the

⁷ Miville does not address age discrimination on appeal.

retaliation claim after finding that Mehlman's comment was unrelated to Miville's reassignments. The trial court then granted summary judgment in favor of the employers on all claims. Miville appeals.

ANALYSIS

I. Standard of Review

When reviewing a summary judgment order, we engage in the same inquiry as the trial court. *Tyrrell v. Farmers Ins. Co.*, 140 Wn.2d 129, 132-33, 994 P.2d 833 (2000). Summary judgment is appropriate only if the pleadings, affidavits, depositions, and admissions on file demonstrate the absence of any genuine issues of material fact, entitling the moving party to judgment as a matter of law. CR 56(c). We consider all facts submitted and all reasonable inferences from them in the light most favorable to the nonmoving party. *Seven Gables Corp. v. MGM/UA Entm't Co.*, 106 Wn.2d 1, 3, 721 P.2d 1 (1986).

We analyze gender discrimination allegations under the three-step *McDonnell Douglas* burden shifting analysis when there is no direct evidence of discrimination. *McDonnell Douglas Corp. v. Green*, 411 U.S. 792, 93 S. Ct. 1817, 36 L. Ed. 2d 668 (1973); *Hill v. BCTI Income Fund-I*, 144 Wn.2d 172, 180, 23 P.3d 440 (2001), *overruled on other grounds by McClarty v. Totem Elec.*, 157 Wn.2d 214, 137 P.3d 844 (2006)). The same *McDonnell Douglas* burden shifting analysis applies in retaliation claims. *Renz v. Spokane Eye Clinic, P.S.*, 114 Wn. App. 611, 618, 60 P.3d 106 (2002). If an employee can make a prima facie showing of discrimination, the burden shifts to the employer to show a legitimate, nondiscriminatory reason for its conduct. *Hill*, 144 Wn.2d at 180-82. If the employer does so, a plaintiff must then show that the

employer's reason was mere pretext. To defeat summary judgment, he or she must show a genuine dispute of material fact as to whether the employer's explanation is worthy of belief. *Domingo v. Boeing Employees' Credit Union*, 124 Wn. App. 71, 88, 98 P.3d 1222 (2004). An employee is entitled to a trial only when the record contains a reasonable, competing inference of retaliation or discrimination. *See Renz*, 114 Wn. App. at 622. But the nonmoving party "may not rely on speculation, argumentative assertions that unresolved factual issues remain, or in having its affidavits considered at face value." *Seven Gables*, 106 Wn.2d at 13. The trial court should grant summary judgment only if, based on all the evidence, reasonable persons could reach but one conclusion. *Wilson v. Steinbach*, 98 Wn.2d 434, 437, 656 P.2d 1030 (1982).

In employment discrimination cases, summary judgment should be granted rarely. *Johnson v. Dep't of Soc. & Health Servs.*, 80 Wn. App. 212, 226, 907 P.2d 1223 (1996). But when issues of material fact do not exist, an order of dismissal is necessary to avoid a useless trial. *See Olympic Fish Prods., Inc. v. Lloyd*, 93 Wn.2d 596, 602, 611 P.2d 737 (1980).

II. Motion to Strike

Miville first contends that the trial court erred in denying her motion to strike certain evidence and by considering this evidence when ruling on the motion for summary judgment. She fails to cite authority for her argument, and she does not adequately specify which of the numerous pieces of evidence she challenges.⁸ We need not consider arguments not developed in the briefs and for which a party has not cited authority. RAP 10.3(a)(6) (appellate brief should

⁸ Although Miville mentions one declaration specifically, she merely states that the declarant joined the staff in 2006; she does not explain why this would render the declaration inadmissible.

No. 37862-1-II

contain argument supporting issues presented for review, citations to legal authority, and references to relevant parts of the record). Thus, we do not review this claim.

III. Procedural Challenges to Hostile Work Environment Claim

A. Statute of Limitations

Miville contends that her hostile work environment claim involves a series of employment practices that tolled the statute of limitations.⁹ The employers counter that the statute of limitations bars any factual basis for her claims that occurred before December 10, 2002.

The statute of limitations for chapter 49.60 RCW claims is three years. RCW 4.16.080(2); *Antonius v. King County*, 153 Wn.2d 256, 260-61, 103 P.3d 729 (2004). But when asserted, individual discriminatory acts form part of the same unlawful employment practice and involve a unitary, indivisible hostile work environment claim, the action is timely if any one of the acts occurred within the statute of limitations. *Antonius*, 153 Wn.2d at 265-66. This is because hostile work environment claims “‘are different in kind from discrete acts’ and ‘[t]heir very nature involves repeated conduct.’” *Antonius*, 153 Wn.2d at 264 (quoting *Nat’l R.R. Passenger Corp. v. Morgan*, 536 U.S. 101, 115, 122 S. Ct. 2061, 153 L. Ed. 2d 106 (2002)). But discrete acts “such as termination, failure to promote, denial of transfer, or refusal to hire” will not toll the statute of limitations. *Antonius*, 153 Wn.2d at 264.

Here, the only asserted adverse employment actions based on conduct falling outside of the statute of limitations are that (1) Miville’s work hours changed from four 10-hour days to five 8-hour days in the summer of 2002, (2) she was transferred to the Admissions Ward in 2002, (3) she was transferred to Medical Records during the investigation into her alleged misconduct in

⁹ Because the exception to the statute of limitations does not apply to discrete acts, it appropriately applies only to Miville’s hostile work environment claim. See *Antonius v. King County*, 153 Wn.2d 256, 264, 103 P.3d 729 (2004).

2001, and (4) the employers failed to promote her to the Psychologist 3 position. Although the change in her work hours involves one isolated, discrete employment decision,¹⁰ she complained about a series of transfers and promotion denials over a period of years. As a result, she asserted transfers and promotion denials involved a continuing employment practice and indivisible, unitary conduct. And because at least one transfer (the TRC) and promotion denial (program manager) occurred within the limitations period, the statute of limitations does not bar the remainder of her transfer and promotion allegations.

B. Tort Claim Filing Compliance

The employers also contend that Miville is barred from bringing a hostile work environment claim because the tort claim she filed with the State does not sufficiently raise a hostile work environment claim. We disagree.

A tort claim must “describe the conduct and circumstances which brought about the injury or damage, describe the injury or damage, state the time and place the injury or damage occurred, state the names of all persons involved, if known, and shall contain the amount of damages claimed.” RCW 4.92.100. Although strict compliance is required for the statutory filing requirement, courts liberally construe the contents of the claim. *Schoonover v. State* 116 Wn. App. 171, 178, 64 P.3d 677 (2003).

Here, Miville’s tort claim asserted “gender-based harassment and retaliation,” describing

¹⁰ Even if we were to decide that the statute of limitations did not bar Miville’s schedule change claim, it fails on the merits. The employer required every employee to work a five-day work week. The goal of this change was to have primary therapists there five days a week for patient treatment. Because the schedule change does not relate to Miville’s gender, she cannot make a prima facie showing of discrimination. *See Johnson*, 80 Wn. App. at 226-27; RCW 49.60.180.

various events and circumstances as the basis of her claims. CP at 62. She also specifically stated that the “circumstances I have described . . . inhibited my ability to work in a hostile-free environment.” CP at 63. Applying the rule of liberal construction to the contents of Miville’s tort claim leads us to conclude that it adequately puts the State on notice of her gender-based hostile work environment claim.

IV. Gender Discrimination and Hostile Work Environment

Miville maintains that a disputed issue of material fact remains as to whether the employees discriminated against her based on her gender and contributed to a hostile work environment. We disagree.

Miville claims gender discrimination in violation of the Washington Law Against Discrimination (WLAD), RCW 49.60.180(3), under disparate treatment and hostile work environment theories. Under the WLAD, an employer may not discriminate against an employee in compensation or other employment conditions based on, among other things, his or her gender.

A. Disparate Treatment

To establish a prima facie disparate treatment case, an employee must show that (1) he or she belongs to a protected class, (2) he or she was treated less favorably in the terms or conditions of employment, (3) than a similarly situated employee outside of the protected class received the benefit, and (4) the employees were doing substantially the same work. *Johnson*, 80 Wn. App. at 227. Here, even if Miville could establish a prima facie case based on the two incidents in which a male employee allegedly received a benefit she did not,¹¹ the employers offered a legitimate,

¹¹Because the record shows only two possible incidents involving a situation where a person outside of the protected class—a male employee—allegedly received a benefit Miville did not, we

nondiscriminatory justification for its conduct in each circumstance.

First, Miville compares her situation with that of Thurston, a male co-worker. She argues that she was discriminated against based on her gender when temporarily reassigned to Medical Records pending investigation of her misconduct because no one disciplined Thurston when he engaged in misconduct by swearing at patients. But Miville and Thurston were not similarly situated.

First, their purported misconduct differed significantly: Miville was reassigned to Medical Records after 14 patients signed a petition alleging that she psychologically abused patients, and Thurston's asserted misconduct appears to involve only one incident of swearing at a patient. Furthermore, they had different job duties at the time of their supposed misconduct: Thurston worked as a ward manager, and Miville worked as a forensic therapist. And Miville left medical records as soon as she was exonerated of the allegations. Significantly, Miville admits that the employers eventually restricted Thurston from the ward because of the incident. Because she and Thurston were not similarly situated, and because the record reveals that he was also removed from patient contact for a period of time because of his misconduct, Miville does not establish a prima facie case of gender-based discrimination.

Even if Miville could show a prima facie case of discrimination, the employers offered a legitimate, nondiscriminatory justification for transferring her to Medical Records. The employers explained their policy of removing an employee from patient contact during an investigation of patient abuse by that employee. Eliminating an employee's patient contact during a misconduct

discuss her remaining allegations of adverse conduct in relation to her retaliation claim.

investigation in a psychiatric hospital setting is a legitimate, nondiscriminatory justification for reassignment. *See Kirby v. City of Tacoma*, 124 Wn. App. 454, 465, 98 P.3d 827 (2004) (employer's investigatory actions are not adverse employment actions sufficient to support a discrimination claim).

Next, Miville asserts gender discrimination because a male forensic therapist, Higgins, was permitted to work on treatment plans and psychosocial assessments—job duties she no longer performed after the duties were transferred to licensed social workers and psychologists. Again, Miville and the male employee were not similarly situated. Although they share the same job title, she did not have a clinical master's degree and Higgins did. As the director of social work explained, without being credentialed by the department, Miville was not entitled to perform such duties, and she did not have the proper degree. Because she and Higgins were not similarly situated, she cannot show a *prima facie* case of gender-based discrimination.

Even if Miville could establish a *prima facie* case, legitimate, non-discriminatory justification exists for the employers' conduct. The employers explained that limiting social work tasks to those with social work degrees or to those with a master's degree in a clinical field better serves WSH patients. Moreover, patients undergoing psychological evaluations would benefit from having staff with higher credentials work on their treatment plans and psycho-social assessments. Miville's disparate treatment claim fails.

B. Hostile Work Environment

Miville also contends that her claimed gender discrimination created a hostile work environment. Again, we disagree.

To establish a hostile work environment claim based on gender discrimination or harassment, an employee must prove the following: (1) the action was unwelcome, (2) the action was because of gender, (3) the action affected the terms or conditions of employment, and (4) the action is imputed to the employer. *Glasgow v. Georgia-Pac. Corp.*, 103 Wn.2d 401, 406-08, 693 P.2d 708 (1985). The employee's gender must be a motivating factor in the employer's treatment in order for a hostile work environment to exist. *Coville v. Cobarc Servs., Inc.*, 73 Wn. App. 433, 438, 869 P.2d 1103 (1994).

Courts determine whether a plaintiff has proved a "hostile work environment" by looking at the totality of the circumstances, including "the frequency of the discriminatory conduct; its severity; whether it is physically threatening or humiliating, or a mere offensive utterance; and whether it unreasonably interferes with an employee's work performance." *Harris v. Forklift Sys., Inc.*, 510 U.S. 17, 23, 114 S. Ct. 367, 126 L. Ed. 2d 295 (1993). "Conduct that is not severe or pervasive enough to create an objectively hostile or abusive work environment—an environment that a reasonable person would find hostile or abusive—is beyond" the purview of gender discrimination prohibitions. *Harris*, 510 U.S. at 21.

As we discussed above, Miville has not shown gender discrimination in the first instance. And her hostile work environment claim appears indistinguishable from her gender-based discrimination claim. By failing to establish any evidence of gender-based disparate treatment, Miville's gender-based hostile work environment claim likewise fails.

V. Retaliation

Finally, Miville argues that the trial court erred in finding that she did not meet her burden

to move forward in her discrimination based retaliation claim.

To establish discriminatory retaliation under RCW 49.60.210, an employee must prove that “(1) he or she engaged in statutorily protected activity, (2) an adverse employment action was taken, and (3) there was a causal link between the employee’s activity and the employer’s adverse action.” *Estevez v. The Faculty Club of the Univ. of Wash.*, 129 Wn. App. 774, 797, 120 P.3d 579 (2005).

A. Protected Activity

The protected activity opposed by the employee must be one recognized under chapter 49.60 RCW, the antidiscrimination statute, and the plaintiff must prove that he or she reasonably believed that the employer’s conduct was unlawful discrimination. *See Coville*, 73 Wn. App. at 440. In determining whether an employee’s activity is protected, we will “balance the setting in which the activity arose and the interests and motives of the employer and employee.” *Coville*, 73 Wn. App. at 439.

Here, Miville first argues that her union activities and complaints to her employer (protests regarding security of the staff, short staffing, crowded wards, patient abuse her reassignments, and her change in duties) are protected activities.¹² But the WLAD does not protect union activity. *See* chapter 49.60 RCW. And her other oppositional activity has nothing to do with discrimination; it relates to how the CFS is run. Thus, Miville cannot rely on these activities as

¹² Although Miville eventually filed a grievance against her employer alleging discrimination and retaliation, filed September 9, 2004, that was after the asserted retaliatory conduct occurred. Thus, the grievance could not have been the protected activity that led to the alleged retaliatory conduct in the first instance.

the foundation for her discrimination based retaliation claim.

Miville next argues that her involvement in the two lawsuits against her employer were protected oppositional activities. Participation in litigation against an employer for alleged sexual discrimination violations is plainly a protected activity. RCW 49.60.210(1) (protecting those who have “filed a charge, testified, or assisted in any proceeding under this chapter”). But the Rust litigation did not involve discrimination, it involved “the care and housing of patients.” CP at 122. Consequently, Miville’s deposition in the sexual harassment case against her employer is the only activity to support her retaliation claim under the WLAD.

B. Adverse Employment Action and Causation

After finding a statutorily protected activity, we must consider whether the employers engaged in adverse employment conduct sufficient to support a retaliation claim. Adverse employment actions include “a change in employment conditions that is more than an ‘inconvenience or alteration of job responsibilities,’ such as reducing an employee’s workload and pay” or a “demotion or adverse transfer.” *Kirby*, 124 Wn. App. at 465 (citations omitted).

Additionally, the employee must prove that his or her protected activity was a “substantial factor” in the employer’s adverse action. *See Estevez*, 129 Wn. App. at 800. When a court inquires as to retaliatory motive, it will take into account the “[p]roximity in time between the adverse action and the protected activity, along with satisfactory work performance.” *Campbell v. State*, 129 Wn. App. 10, 23, 118 P.3d 888 (2005).

Here, each asserted retaliatory action does not amount to an adverse employment action, or, if it does, Miville cannot show that her involvement in the sexual harassment litigation was a

substantial factor in the employers' adverse decision. We address her retaliation assertions in turn.

1. Office Location

First, Miville claims retaliation because her office locations isolated her from other employees and impaired her ability to perform her union duties. But her Ward F-1 office remained locked for security purposes. Other staff, including psychologists, had offices in the same location. And because her office was transferred to a classroom in the TRC and because she worked in that ward, her employer logically explained that a person's desk should be near his or her workspace.¹³ Furthermore, she had access to a private conference room if she needed it. Miville's office placement did not reflect adverse employment conduct because unlocking a door, having to walk further to meet employees in other wards, and holding private meetings in a conference room are no more than minor inconveniences.

2. Office Equipment

Miville also claims that she lacked needed office equipment when she initially transferred to the TRC. But after she requested the equipment, she was given a telephone, computer, and other equipment within a few weeks. This delay was a mere inconvenience and did not amount to significant adverse employment action.

3. Limiting Activities During Core Treatment Hours

Next, Miville complains of Mehlman's directive requiring staff to receive permission to divert from their job duties during core patient treatment hours. Mehlman stated that he issued

¹³ Miville also contends that this room had been a storage room. Even if it were, the record shows that the room had windows and suitable office space.

the directive to ensure that patients were given the highest priority during treatment hours. Other staff stated that Mehlman said he did so to “keep Mary Miville in check.” CP at 112. But again, even if directed at Miville, this mere inconvenience did not prevent or significantly impair her ability to perform union activities. She merely had to schedule them outside of the core treatment hours, leaving her four hours out of every day to do so. Core treatment hours are 8:30-10:30 a.m. and 1:00-3:00 p.m. This requirement does not amount to adverse employment action.

4. Denying Training

Miville further complains that her employer denied her training opportunities. But the continuing medical education and forensic series lectures were not part of her professional development. And nothing shows that she properly requested to attend the lectures. Furthermore, although it appears that she properly requested to attend a 40-hour mediation training, she was not permitted to attend because she did not explain how it would enhance her job performance as a forensic therapist, and no other staff were permitted to receive the training. Denying Miville these training opportunities did not arise to an adverse change in employment conditions.

5. Denying Promotions

Miville also maintains that she was denied promotions because of retaliation. Assuming this to be an adverse employment action, she cannot show causation, that is, that her involvement in the sexual harassment case was a substantial factor in the employers’ decision not to promote her. First, the other woman was hired as the F-6 Ward Program Manager because she had supervisory experience and higher education credentials (a master’s degree in special education

and she was in the process of obtaining doctorate in psychology). Second, Miville lacked qualifications for the other positions: she did not have a master's degree in psychology or social work to make her eligible for the Social Worker 3 or Psychologist 3 positions. Thus, Miville cannot show that her involvement in the sexual harassment case was a substantial factor in denying her the promotion opportunities.

6. Transfers and Job Duty Changes

Finally, Miville contends that her transfers within WSH and changes in her job duties were the result of retaliation. For example, she contends that she was transferred to the TRC because she asserted reinstatement of her prior duties that had been transferred to social workers. But an employee cannot show retaliation when the employee's job responsibilities are altered to meet the needs of an employer, and the employee suffers no loss in pay, demotion, or tenure. *Donahue v. Central Wash. Univ.*, 140 Wn. App. 17, 21, 26, 163 P.3d 801 (2007) (finding no retaliation after professor transferred from computer sciences department director to College of Arts and Humanities because of tension within the department); *compare Campbell*, 129 Wn. App. at 22-23 (finding issue of fact as to whether transfer from secretarial position to custodian was a demotion). And mere reassignment of job duties is generally not considered adverse employment conduct; the plaintiff must show that a reasonable employee would find the reassignment adverse. *Burlington N. & Santa Fe Ry. Co. v. White*, 548 U.S. 53, 71, 126 S. Ct. 2405, 165 L. Ed. 2d 345 (2006). A reasonable employee would not find Miville's transfers and job duty changes adverse. Rather, her job responsibilities were altered to meet the adjustments within the CFS after the Rust litigation because it led to increased patient therapy and reassigned social work duties to those

with relevant master's degrees.

The only transfer that appears to come close to a demotion was Miville's transfer to Medical Records. But this could not be an adverse employment action because reassigning an employee while investigating a complaint against that employee is not an adverse employment action when the employee suffers no loss of pay or benefits. *See Tyner v. State*, 137 Wn. App. 545, 552, 554, 564-65, 154 P.3d 920 (2007) (no adverse employment action during investigation when employee was relocated to a different city and job changed from Developmental Disability Administrator in residential rehabilitation facility to Regional Licensor of foster care), *review denied*, 162 Wn.2d 1012 (2008). Here, Miville did not suffer such a loss.

Even assuming the transfer to medical records was an adverse employment action, she cannot prove causation. Nothing in the record shows that she was denied patient treatment duties because of her litigation involvement. Rather, she was transferred and denied patient contact because there were 14 patient complaints against her and her employers logically took the precaution of preventing patient contact while investigating the allegations.

Miville has not met her initial burden of proving a prima facie retaliation claim. Thus, the trial court properly granted summary judgment in the employers' favor.

ATTORNEY FEES

Miville requests attorney fees under RAP 18.1 as the prevailing party. She cites no ground under RAP 18.1, and she does not prevail. We decline to award attorney fees on appeal.

Affirmed.

A majority of the panel having determined that this opinion will not be printed in the

No. 37862-1-II

Washington Appellate Reports, but will be filed for public record pursuant to RCW 2.06.040, it is so ordered.

We concur:

Houghton, P.J.

Quinn-Brintnall, J.

Kulik, J.